IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 9TH OCTOBER 2006 / 17TH ASWINA 1928

Bail Appl..No. 5116 of 2006

CRMP.4760/2006 of J.M.F.C.-II,ATTINGAL
CRIME NO. 395/2006 OF MANGALAPURAM POLICE STATION

.....

PETITIONERS/ACCUSED:

---

1. SAJITH, AGED 18, S/O.MADHUSOODANAN NAIR
THINAVILA VEEDU, POOLANTHARA,
KOLIYAKODE VILLAGE.

2. RETHEESH, AGED 19, S/O.PUSHPARAJAN,
SINDHU VILASOM VEEDU, PANAGAPARA VILLAGE.

3. SUBASH, AGED 18, S/O. SURENDRAN,
SANTHA BHAVAN, NEAR SANTHIGIRI SCHOOL,
MANIOCKAL VILLAGE.

BY ADV. SRI.P.A.NOOR MUHAMMED
SRI.C.K.PRASAD
SRI.VIKANTH K.PUTHUMANA

RESPONDENTS: COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, MANGALAPURAM,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA.

BY PUBLIC PROSECUTOR P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2006, ALONG WITH BA NO. 5117 OF 2006 BA NO. 5124 OF 2006 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.M.JAMES, J.

B.A.Nos. 5116/06, 5117/06 & 5124/06

DATED THIS THE 9TH DAY OF OCTOBER, 2006

O R D E R

The applicants in all the three bail applications are one and the same persons. In B.A.No.5116/2006, the petitioners are accused 2 to 4 in crime No.395/2006 of Mangalapuram Police Station, the offence alleged against them being under Sections 489B & C IPC read with Section 34 IPC.

2. The allegation is that they were found in illegal possession of 67 counterfeit currency notes of fifty rupees denomination, on 28.6.2006 and therefore, the second accused was arrested on the same day, viz. 28.6.2006. The accused Nos. 3 and 4 were arrested on 3.7.2006. They are in judicial custody in that crime.

3. The petitioners in B.A.No.5124/2006 are before this Court under Section 439 Cr.P.C., in crime No.372/2006 of Punalur Police Station, for the offence punishable under Sections 392 and 302 IPC. They are

accused 1, 2 and 4 in the above crime. The arrest of these petitioners was recorded in this case as well on 28.6.2004 and 3.7.2006, respectively.

4. In B.A.No.5117/2006 the petitioners are accused 2 to 4 in crime No.406/2006 of Mangalapuram Police Station, the offence alleged against them being under Sections 120B and 115 IPC. They alleged to have conspired to kidnap one Sumithran and murder a minor boy, Anu, at the instigation of one Sheeba, the first accused, in the crime. The submission of the prosecution is that the investigation is complete in respect of crime No.406/2006 of Mangalapuram police station.

5. When the applications came up for consideration, the learned counsel for the petitioners placed reliance on Muhammed Iqbal Madar Sheikh and others v. State of Maharashtra (1996 (1) SCC 722) to emphasis the point that the right of the accused, under Section 167(2)(a) of Cr.P.C., cannot be defeated for any reason and the Court need not extend the remand, so as to enable the Investigating Officer to complete the

investigation.

6. The learned Public Prosecutor however, placed reliance on Ateef Nasir Mulla v. State of Maharashtra (2005 (4) KLT 74 SC), to show the fact that when the investigating agency finds difficulty in completing the investigation, because of the ramifications of the actions of the accused and the number of places, from where the informations and evidence have to be collected, in such situations, the Court may grant time, considering Section 49(2) (b) of the Tada Act, and the statutory period, under Section 167 (2)(a) of Cr.P.C., need not be resorted to. Then, of course, the remand could be extended and bail need not be granted on the completion of the period mentioned under Section 167(2) Cr.P.C.

7. Though Ateef's case cited above, is later in time, the view discussed, and the legal principle, laid down in Muhammed Iqbal Madar Sheikh's case, cited above, by a larger bench, had not been placed for the consideration of the division bench of the Supreme Court. In the given case at hand, I am of the view that

the application of section 167(2) Cr.P.C, has to be resorted to, as the facts in Ateef's case, cited above, are different. In the above factual and legal positions, I grant bail to the petitioners and release them from jail, subject to the following conditions:-

(a). Each petitioner shall execute bail bonds for an amount of Rs.25,000/-, in each case, with two solvent sureties, each for the like sum, to the satisfaction of the concerned lower Court.

(b). The petitioners in B.A.No.5116/2006 and 5117/2006 shall report before the Investigating Officer, who is investigating crime No.395/2006 and 406/2006 of Mangalapuram Police Station, on every Monday, between 10.00 a.m and 11.00 a.m., for a period of four months, starting from 16.10.2006, and thereafter, on the first working day of every month, between the same timings, till the final trial and disposal of the case.

(c). The petitioners, accused, in crime

No.372/2006 of Punalur Police Station, shall report before the Investigating Officer, on every Wednesday, starting from 11.10.2006 between 10.00 a.m and 11.00 a.m., for a period of six months, and thereafter, on the first working day every month, between the same timings, till the final trial and disposal of the case.

(d). The petitioners shall not leave the State of Kerala, untill the final trial and disposal of each case.

(e). The petitioners shall not interfere with the investigation, attempt to influence the witnesses or threaten them or cause any hindrance to the smooth conduct of the case.

The applications are allowed as above.

J.M.JAMES
JUDGE

mrcs